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10 Attorneys for Plaintiff Sony Corporation

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION

14 SONY CORPORATION, A Japanese
corporation,

15 Plaintiff,

16 vs.

17 VIZIO, Inc.,

18 Defendant.
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CASE NO. CV-01135-AHS-AN

AMENDED NOTICE OF RELATED
CASES

1 TO THE CLERK OF THE COURT:

2 This case (the "Vizio Action") is substantially related to *Sony Corp. v.*
3 *Westinghouse Digital Electronics, LLC*, CV08-03934 RGK (FMOx)
4 ("Westinghouse Action"), which was filed in this Court on June 16, 2008 and is
5 pending before Judge Klausner.

6 The two actions are substantially related because:

- 7 (1) both actions involve the same plaintiff, Sony Corporation;
8 (2) Sony Corp. is asserting the same ten patents against the sole
9 defendant in each action (Sony is concurrently filing an Amended
10 Complaint in this action that removes 4 of the 14 originally
11 asserted patents from the case, thus rendering identical the patents
12 asserted in this action and the Westinghouse Action);
13 (3) both actions involve the same underlying technology and similar
14 infringing products, flat-screen digital televisions; and
15 (4) both actions will involve substantially the same patent issues of
16 validity, enforceability and claim construction.

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19
20 DATED: November 14, 2008

Respectfully submitted,

21 QUINN EMANUEL URQUHART OLIVER &
22 HEDGES, LLP

23
24 By  /FOR
25 Steven M. Anderson
26 Attorneys for Plaintiff Sony Corporation
27
28

EXHIBIT B

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6 Attorneys for Defendant VIZIO, Inc.

7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

10
11 SONY CORPORATION,
12 Plaintiff,

13 v.

14 VIZIO, INC.,
15 Defendant.

Case No. SACV-08-01135-AHS(ANx)

**VIZIO'S OPPOSITION TO SONY'S
AMENDED NOTICE OF RELATED
CASES**

[Proposed Transferee Judge:
Honorable R. Gary Klausner]

16
17 TO THE CLERK OF THE COURT:

18 For the following reasons, Sony's second attempt to transfer this case from
19 Judge Stotler to Judge Klausner should be denied, just as the first one was.

20 1. Sony's Amended Notice of Related Cases is a request for a "do-over",
21 effectively seeking reconsideration of Judge Klausner's first Order (See Docket
22 Entry No. 7, filed November 2, 2008) declining to accept a transfer. In fact, on
23 November 10, Sony requested VIZIO's consent to file such a motion for
24 reconsideration on November 14. When VIZIO did not consent, Sony filed its
25 "Amended Notice of Related Cases" that day instead. Not content with that filing,
26 Sony also filed on November 19 a motion for reconsideration of Judge Klausner's
27 first Order and an unwarranted *Ex Parte* Application asking for that Motion to be
28 taken up on an expedited basis.

1 2. There is no basis in law or in fact for Sony's submission. Local Rule
2 83-1 does not give a party repeated bites at the apple, and does not authorize a party
3 to file notice after notice in an attempt to effect a transfer. Nor do the rules
4 contemplate the filing of an "Amended Notice of Related Cases."

5 3. Furthermore, Sony has no "right" to have this case heard by a
6 particular judge and Sony's Amended Notice can be rejected solely for this reason
7 as well. The local rules on related cases were adopted for the Court's benefit rather
8 than the tactical advantage of private litigants, and Sony has no standing or legally
9 cognizable right to seek to overturn the Court's decision to decline a case transfer.
10 Under this Court's procedures, that is a matter for the Case Assignment Committee
11 if the transferor judge disagrees. General Order 8-05, § 5.2. Moreover, the Judges
12 of this Court have discretion not to accept a case transfer under Local Rule 83-1.3.
13 *Payne v. Anvil Knitwear, Inc.*, 2007 U.S. Dist. LEXIS 51352 at *8 (C.D. Cal. June
14 27, 2007).

15 4. This case may never be heard in this Court in any event. Sony was
16 notified before it filed its original Complaint here that VIZIO had first filed a
17 declaratory judgment action in the District of New Jersey involving virtually all the
18 same Sony patents. *VIZIO, Inc. v. Sony Corp. et al.*, No. 08-5029 (FSH/OS).
19 Rather than simply counterclaim in New Jersey, Sony chose to judge shop by filing
20 its Complaint here along with its first Notice of Related Cases, claiming that the
21 case was related to the *Westinghouse* case.

22 5. Tellingly, Sony did not disclose VIZIO's New Jersey case to this
23 Court and violated Local Rule 83-1.4 by failing to file a "Notice of Pendency of
24 Other Actions or Proceedings" with their Complaint. Under Federal Circuit (and
25 Ninth Circuit) precedents, the forum of the first-filed case is normally favored
26 under the first-to-file rule. *Micron Technology, Inc. v. Mosaid Technologies, Inc.*,
27 518 F.3d 897, 904 (Fed. Cir. 2008)("The general rule favors the forum of the first-
28 filed action, whether or not it is a declaratory judgment action."). In addition, since

1 this Court is the forum of the second-filed case, the normal procedure is for this
2 Court to stay or dismiss this action, leaving it to the District of New Jersey court to
3 decide any issue regarding transfer, etc. *Alltrade, Inc. v. Uniweld Products, Inc.*,
4 946 F.2d 622, 627-29 (9th Cir. 1991).

5 6. In any event, transfer of this case to Judge Klausner would be
6 unwarranted under Local Rule 83-1.3. Although Sony amended its original
7 Complaint to make it appear that only the same ten patents were asserted in both
8 this case and the *Westinghouse* case, that is not the whole story. A “real and
9 substantial” dispute seems to remain under the four patents it dropped, and claims
10 may still be asserted under those four patents. While Sony has sent VIZIO a
11 covenant not to sue under the four “dropped” patents, that covenant is limited, and
12 does not appear to extend to the full breadth of Sony’s original infringement
13 allegations against VIZIO. *See FieldTurf USA, Inc. v. Sports Constr. Group, LLC*,
14 507 F.Supp.2d 801 (N.D. Ohio 2007). Therefore, the patents in suit here will not
15 likely end up being the same as those in the *Westinghouse* case.

16 7. Even if the exact same patents were at issue in both cases, however,
17 that alone would not be sufficient under the local rule to justify a related case
18 transfer, since at least one of the other factors identified in clause (a), (b) or (c) of
19 the rule must be present as well. *See* L.R. 8-1.3.1. Sony makes a conclusory claim
20 that the two actions will involve “substantially the same patent issues of validity,
21 enforceability and claim construction,” but the same thing might be said of any two
22 actions involving the same patents. L.R. 8-1.3 explicitly requires more than that to
23 justify a related case transfer. Moreover, while VIZIO’s products are televisions,
24 they are also different from Westinghouse’s, so Sony’s infringement claims against
25 these two defendants will almost certainly differ, creating different issues of fact
26 and law. It cannot simply be assumed--as Sony does--that the same issues of claim
27 construction, validity and enforceability will arise in both actions. For example,
28 differences in products lead to different infringement and claim construction issues.

1 In short, Sony's Amended Notice is unsupported and does not justify transfer.

2 Since the requirements of Local Rule 83-1.3.1 have not been met, transfer
3 should be denied.

4 Dated: November 20, 2008

Respectfully submitted,

5 JONES DAY

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7 By: 
8 Thomas R. Malcolm

9 Attorneys for Defendant
10 VIZIO, INC.
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EXHIBIT C

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13 Attorneys for Plaintiff Sony Corporation

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 SOUTHERN DIVISION

17 SONY CORPORATION, A Japanese
18 corporation,

19 Plaintiff,

20 vs.

21 VIZIO INC., A California corporation,

22 Defendant.

CASE NO. CV-01135-AHS-AN

23 **SONY'S NOTICE OF MOTION AND**
24 **MOTION FOR RECONSIDERATION**
25 **OF TRANSFER ORDER;**
26 **MEMORANDUM OF POINTS AND**
27 **AUTHORITIES IN SUPPORT**
28 **THEREOF**

The Honorable Alicemarie H. Stotler

[Concerns Order by the Honorable R.
Gary Klausner Declining Intra-District
Transfer]

Hearing Date and Time: December 8,
2008, 10:00 a.m.

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that plaintiff Sony Corporation ("Sony")
3 will, and hereby does, move the Honorable Judge R. Gary Klausner to reconsider his
4 October 24, 2008 Order declining to transfer the case captioned Sony Corp. v.
5 Vizio, Inc., CV08-01135 AHS (ANx) (the "Vizio Action") to his docket. This
6 Motion is made pursuant Local Rule 7-18, on the grounds that material facts
7 presented to the Court were overlooked and not considered in its decision to decline
8 transfer of the Vizio Action.

9 This Motion is based on this Notice of Motion and Motion, the
10 accompanying Memorandum of Points and Authorities, the Declaration of Charlie
11 Y. Chou filed concurrently herewith, and all other matters of which the Court may
12 take judicial notice.

13 Statement of Rule 7-3 Compliance

14 This motion is made following the conference of counsel pursuant to
15 L.R. 7-3 which took place on November 13, 2008. On November 19, 2008, Vizio
16 Inc. ("Vizio") notified Sony that it opposes this motion.

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18
19 DATED: November 19, 2008

Respectfully submitted,

20 QUINN EMANUEL URQUHART OLIVER &
21 HEDGES, LLP

22 By  FOR
23 Kevin P.B. Johnson
24 Attorneys for Sony Corporation
25
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2

3 **Introduction**

4 This is a motion for reconsideration of the Court's denial of an intra-

5 district transfer of this case (the "Vizio Action") to the docket of Judge Klausner,

6 where Sony already has a related patent infringement case pending entitled Sony

7 Corp. v. Westinghouse Digital Electronics, LLC, CV08-03934 RGK (FMOx)

8 ("Westinghouse Action"). The Westinghouse and Vizio Actions involve the

9 identical 10 patents and substantially similar accused products. Accordingly, a

10 transfer of the Vizio Action will benefit judicial economy by preventing the

11 unnecessary and inefficient duplication of this Court's efforts and eliminate the risk

12 of inconsistent substantive rulings. Based on the Court's Order declining transfer,

13 however, it appears that the overlap of the patents asserted in the two cases was not

14 considered, as boxes on the form order that relate to that issue were not marked.

15 Accordingly, the Court should reconsider its order denying transfer of the Vizio

16 Action and allow it to be properly transferred to the docket of Judge Klausner as a

17 related case.

18

19 **Factual Background**

20 On June 16, 2008, Sony filed a complaint for multiple counts of patent

21 infringement against Westinghouse. Declaration of Charlie Y. Chou, ("Chou

22 Decl."), Ex. A. In the Westinghouse Action, Sony asserted that Westinghouse

23 infringed seven of its patents, U.S. Patent Nos. 5,434,626, 5,583,577, 5,684,542,

24 5,731,847, 5,751,373, 6,111,614, and RE38,055. Id. On September 16, 2008, the

25 Court granted a joint stipulation allowing Sony to file its First Amended Complaint

26 in the Westinghouse Action, thereby adding claims of infringement of three

27 additional patents, U.S. Patent Nos. RE40,468, 6,778,182, and 6,661,472. Chou

28 Decl., Exs. B and C. The patents asserted in the Westinghouse Action concern

51354/2692196.3

1 various aspects of the display, interface, and data transmission technology of digital
2 display devices.

3 On October 10, 2008, Sony filed suit against Vizio, another digital
4 television manufacturer, and the case was assigned to Judge Stotler. Chou Decl.,
5 Ex. D. In the Vizio Action, Sony asserted all ten of the patents at issue in the
6 Westinghouse Action and four additional patents relating generally to display
7 technology: U.S. Patent Nos. 5,285,285, 5,212,553, 5,168,362 and 5,539,425. Id.
8 Concurrently with the filing of the Vizio Action, Sony filed a Notice of Related
9 Case and a Civil Cover Sheet, both of which noted that the Westinghouse Action
10 and the Vizio Action overlapped with respect to the patents-in-suit and the
11 determinations of questions of law and fact. Chou Decl., Ex. E and F. In addition,
12 the Civil Cover Sheet also noted the potential for substantial duplication of labor if
13 the two cases were adjudicated separately. Chou Decl., Ex. F.

14 In accordance with the typical process in this district for handling
15 related cases, intra-district transfer of the Vizio Action to the docket of Judge
16 Klausner was sought. However, on October 24, 2008, Judge Klausner declined to
17 accept transfer of the case. In declining to accept transfer, the Court expressed the
18 view that the two cases were "not related." Chou Decl. Ex. G.

19 In the section of the Court's Order entitled "REASON FOR
20 TRANSFER AS INDICATED BY COUNSEL," the Court explicitly indicated that
21 it considered the fact that the two cases called for determinations of the same or
22 substantially related or similar questions of law and fact (indicated by the check
23 mark next to box "B"). However, two other factors, both identified in the Notice of
24 Related Case and Civil Cover Sheet, appear to have been overlooked and not
25 considered (as indicated by the *lack* of a check mark next to their respective
26 identifiers ("C" and "D")). Chou Decl., Ex. G. Specifically, the factors of
27 substantial duplication of labor if the two cases were tried separately (as indicated
28 by the identifier "C") and the fact that the two cases involve the same patents (as

1 indicated by the identifier "D") were not acknowledged as factors presented by
2 counsel for the Court's consideration. Id.

3 On November 14, 2008, Sony filed its First Amended Complaint for
4 Patent Infringement in the Vizio Action, which removed four previously asserted
5 patents from the case: U.S. Patent Nos. 5,285,285, 5,212,553, 5,168,362 and
6 5,539,425. Chou Decl., Ex. H. As a result, the 10 patents remaining in the Vizio
7 Action are identical to the 10 patents at issue in the Westinghouse Action.

8
9 Argument

10 Sony respectfully moves to reconsider Judge Klausner's Order
11 declining transfer of the Vizio Action. "A motion for reconsideration of the
12 decision of any motion may be made only on grounds of...a manifest showing of a
13 failure to consider material facts presented to the court before such decision." Civil
14 L.R. 7-18(c).

15 Judge Klausner's Order declining transfer of the Vizio Action did not
16 acknowledge the consideration of two material facts presented in Sony's Notice of
17 Related Case and Civil Cover Sheet. Specifically, the factors of substantial
18 duplication of labor if the two cases were tried separately and the fact that the two
19 cases involve the same patents were not acknowledged as factors considered in
20 Judge Klausner's Order. Chou Decl., Ex. G. Accordingly, it appears that the Court
21 overlooked and failed to consider these two material facts.

22 The Westinghouse and Vizio Actions involve the identical ten patents
23 and substantially similar accused products. Thus, a transfer will benefit judicial
24 economy by preventing the unnecessary and inefficient duplication of this Court's
25 efforts and eliminate the risk of inconsistent substantive rulings. For example, if the
26 Vizio Action were not transferred, both Judge Klausner and Judge Stotler would
27 engage in claim construction for the same 10 patents and would consider summary
28 judgment motions applying those patents against the same types of products, with a

1 corresponding duplication of efforts and risk of inconsistent rulings. Similarly, both
2 Judge Klausner and Judge Stotler would likely address the same prior art issues as
3 well.

4 Accordingly, the Court's Order declining intra-district transfer of the
5 Vizio Action should be reconsidered, and it should be transferred to the docket of
6 Judge Klausner.

7
8 DATED: November 19, 2008

Respectfully submitted,

9 QUINN EMANUEL URQUHART OLIVER &
10 HEDGES, LLP

11
12 By

 /FOR
Kevin P.B. Johnson
Attorneys for Sony Corporation

EXHIBIT D

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13 Attorneys for Plaintiff Sony Corporation

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 SOUTHERN DIVISION

17 SONY CORPORATION, A Japanese
18 corporation,

19 Plaintiff,

20 vs.

21 VIZIO INC., A California corporation,

22 Defendant.

CASE NO. CV-01135-AHS-AN

TIME-SENSITIVE

SONY CORPORATION'S *EX PARTE*
APPLICATION SEEKING WAIVER OF
L.R. 7-3'S 20-DAY WAITING PERIOD
AND SHORTENING OF BRIEFING
SCHEDULE REGARDING SONY'S
MOTION FOR RECONSIDERATION
OF TRANSFER ORDER;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF

[PROPOSED] ORDER FILED
CONCURRENTLY HEREWITH

The Honorable Alicemarie H. Stotler

Hearing Date and Time: TBD

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that Pursuant to Local Rule 7-19, Plaintiff
3 Sony Corporation ("Sony") will, and hereby does, apply *ex parte* for entry of the
4 accompanying [Proposed] Order regarding Waiver of L.R. 7-3's 20-Day Waiting
5 Period and Shortening of Briefing Schedule Regarding Sony Corporation's Motion
6 for Reconsideration of Transfer Order.

7 Pursuant to Local Rules 7-19 and 7-19.1, on November 17, 2008,
8 notified Vizio Inc.'s ("Vizio") counsel of the date, time, and substance of this *ex*
9 *parte* application. Vizio's counsel opposes this application. The name of Vizio's
10 counsel is James L. Wamsley III and William J. Brown, Jr. of Jones Day. Mr.
11 Wamsley's business address is 901 Lakeside Avenue, Cleveland, Ohio 44114;
12 phone: 216-586-3939. Mr. Brown's business address is 2 Park Plaza, Suite 1100,
13 Irvine, California 92614.

14
15
16 DATED: November 19, 2008

QUINN EMANUEL URQUHART OLIVER &
HEDGES, LLP

17
18
19 By

 / FOR
Kevin B. Johnson
Attorneys for Plaintiff Sony Corporation

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff Sony Corporation ("Sony") respectfully applies *ex parte* to this Court for an order of Waiver of Local Rule 7-3's 20-Day Waiting Period and Shortening of Briefing Schedule Regarding Sony Corporation's Motion for Reconsideration of Transfer Order.

As set forth in greater detail in Sony's Motion for Reconsideration of Transfer Order and supporting documents in accordance with Local Rule 7-18, material facts presented to the Court were respectfully overlooked in its decision to decline intra-district transfer of this case (the "Vizio Action"). Specifically, Judge Klausner denied intra-district transfer of the Vizio Action as a related case to his docket, where Sony already has a related patent infringement case pending entitled Sony Corp. v. Westinghouse Digital Electronics, LLC, CV08-03934 RGK (FMOx) ("Westinghouse Action"), despite the fact that the 14 patents-at-issue in the Vizio Action included all 10 of the patents-at-issue in the Westinghouse Action and the accused products in each are digital televisions (Sony's First Amended Complaint filed on November 14, 2008 dropped 4 patents and as a result, the Vizio Action and the Westinghouse Action now involve the same 10 patents). Thus, the two actions involve the same plaintiff, the same patents, the same underlying technology, and the same types of infringing products and are therefore unquestionably substantially related, involving the same or substantially identical questions of law and fact.

Accordingly, a transfer of the Vizio Action to Judge Klausner's docket would benefit judicial economy by preventing the unnecessary and inefficient duplication of judicial efforts and eliminate the risk of inconsistent substantive rulings. For example, if the Vizio Action were not transferred, both this Court and Judge Klausner would engage in claim construction for the same 10 patents and would consider summary judgment motions applying those patents against the same types of products, with a corresponding duplication of efforts and risk of

1 inconsistent rulings. Similarly, both Judge Klausner and Judge Stotler would likely
2 address the same prior art issues as well.

3 Expedited consideration of Sony's motion for reconsideration is
4 warranted. Vizio's answer is currently due December 15, 2008. Soon thereafter the
5 Court will set a Rule 16 conference, and discovery will commence. Accordingly, it
6 is in the interest of the Court and the parties to resolve the issue of intra-district
7 transfer as soon as possible before it is necessary for the Court to engage in
8 duplicative efforts of apprising itself of the nature of the case and of the 10 patents
9 and accused products at issue.

10 Sony and Vizio met and conferred on the substance of Sony's motion
11 for reconsideration six days ago on November 13, 2008. Sony therefore requests
12 that the Court waive the 20-day waiting period set forth in Local Rule 7-3 and allow
13 for the immediate filing of Sony's Motion to Reconsider Transfer Order. Sony also
14 requests that the parties' briefing schedule be shortened as follows: Sony's Motion
15 for Reconsideration to be filed on November 19, 2008, Vizio's opposition, if any, to
16 be filed on November 26, 2008, and Sony's reply to be filed on December 2, 2008,
17 with a hearing date tentatively set for December 8, 2008. For the foregoing reason,
18 Sony's requested relief should be granted.

19
20 DATED: November 19, 2008

QUINN EMANUEL URQUHART OLIVER &
HEDGES, LLP

21
22 By  FOR
23 Kevin P.B. Johnson
24 Attorneys for Plaintiff Sony Corporation
25
26
27
28

EXHIBIT E

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6 Attorneys for Defendant VIZIO, Inc.

7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

10
11 SONY CORPORATION,

12 Plaintiff,

13 v.

14 VIZIO, INC.,

15 Defendant.
16
17

Case No. SACV-08-01135-AHS(ANx)

**VIZIO'S MEMORANDUM OF
POINTS AND AUTHORITIES
OPPOSING SONY
CORPORATION'S *EX PARTE*
APPLICATION SEEKING WAIVER
OF L.R. 7-3'S 20-DAY WAITING
PERIOD AND SHORTENING OF
BRIEFING SCHEDULE
REGARDING SONY'S MOTION
FOR RECONSIDERATION OF
TRANSFER ORDER**

[Proposed Transferee Judge:
Honorable R. Gary Klausner]

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21 Sony Corporation's *Ex Parte* Application abuses this Court's rules and
22 procedures governing *ex parte* relief and should be denied. No extraordinary relief
23 is at stake, and Sony has not demonstrated that it will suffer any prejudice if its
24 unwarranted motion for reconsideration of an intra-district transfer order is taken up
25 on the regular schedule.

26 This Court's standing Order clearly states that:

27 *Ex Parte* applications are ONLY for extraordinary relief.

28 Sanctions may be imposed for misuse of *ex parte*

1 applications. *See Mission Power Engineering Co. v.*
2 *Continental Casualty Co.*, 883 F.Supp. 488 (C.D. Cal.
3 1995).

4 As the *Mission Power Engineering* decision makes clear, “[e]x parte motions are
5 rarely justified,” and are “inherently unfair” when--as here--they are filed not to
6 secure legitimate extraordinary relief but instead in an effort to gain tactical
7 advantage. 883 F.Supp. at 490. Sony’s Application fits squarely within the mold
8 criticized by the *Mission Power Engineering* court as “debilitat[ing] the adversary
9 system.” *Id.* A motion for reconsideration of an intra-district transfer order decided
10 weeks ago in no way qualifies for extraordinary relief. In addition, Sony advised
11 VIZIO of its intention to make its *ex parte* application only 24 hours in advance,
12 engaging in the very “gamesmanship” decried in the *Mission Power Engineering*
13 opinion. *Id.*

14 Sony’s Application also fails miserably when measured against the two-part
15 test for *ex parte* motions established in the *Mission Power Engineering* decision
16 (*Id.* at 492):

17 What showing is necessary to justify *ex parte*
18 relief? First, the evidence must show that the moving
19 party’s cause will be irreparably prejudiced if the
20 underlying motion is heard according to regular noticed
21 motion procedures. Second, it must be established that
22 the moving party is without fault in creating the crisis that
23 requires *ex parte* relief, or that the crisis occurred as a
24 result of excusable neglect.

25 Putting aside Sony’s own fault in delaying several weeks before raising the issue--
26 which is reason enough to deny their Application--it is plain that Sony has
27 demonstrated no irreparable prejudice if its motion for reconsideration “is heard
28 according to regular noticed motion procedures.” As Sony itself concedes, VIZIO

1 is not even due to respond to the Amended Complaint for several weeks. No
2 procedural or substantive prejudice will be visited on Sony if it is required to follow
3 this Court's "regular noticed motion procedures." No Rule 16 conference will be
4 held and no duplicative efforts will be undertaken by the Court if those procedures
5 are followed. This is particularly true given the fact that Sony yesterday consented
6 to a 30-day extension of time for VIZIO to respond to its Amended Complaint. If
7 granted, VIZIO's response will not be due until January, 2009--providing ample
8 time for hearing Sony's motion on the normal schedule.

9 Beyond those deficiencies, Sony's motion for reconsideration is itself
10 baseless. First, Sony has not established a basis for reconsideration under any of
11 the three grounds required by L.R. 7-18. While Sony purports to rely on L.R. 7-
12 18(c), it has not made (and cannot make) "a manifest showing of failure to consider
13 material facts presented to the Court." Sony has not identified a single material fact
14 that this Court failed to consider. Indeed, Sony attempts to rely on the substance of
15 its Amended Complaint--which was not filed until November 14--weeks after this
16 Court's Order denying the intra-district transfer. These facts alone demonstrate that
17 reconsideration is unwarranted.

18 Furthermore, Sony has no "right" to have this case heard by a particular
19 judge, and Sony's motion for reconsideration can be denied solely for this reason as
20 well. The local rules on related cases were adopted for the Court's benefit rather
21 than the tactical advantage of private litigants, and Sony has no standing or legally
22 cognizable right to seek reconsideration of the Court's decision to decline a case
23 transfer. Under this Court's procedures, that is a matter for the Case Assignment
24 Committee if the transferor judge disagrees. General Order 8-05, § 5.2. Moreover,
25 the Judges of this Court have discretion not to accept a case transfer under Local
26 Rule 83-1.3. *Payne v. Anvil Knitwear, Inc.*, 2007 U.S. Dist. LEXIS 51352 at *8
27 (C.D. Cal. June 27, 2007).

28 This case may never be heard in this Court in any event. Sony was notified

1 before it filed its original Complaint here that VIZIO had first filed a declaratory
2 judgment action in the District of New Jersey involving virtually all the same Sony
3 patents. *VIZIO, Inc. v. Sony Corp. et al.*, No. 08-5029 (FSH/OS). Rather than
4 simply counterclaim in New Jersey, Sony chose to judge shop by filing its
5 Complaint here along with its first Notice of Related Cases, claiming that the case
6 was related to the *Westinghouse* case.

7 Tellingly, Sony did not disclose VIZIO's New Jersey case to this Court and
8 violated Local Rule 83-1.4 by failing to file a "Notice of Pendency of Other Actions
9 or Proceedings" with their Complaint. Under Federal Circuit (and Ninth Circuit)
10 precedents, the forum of the first-filed case is normally favored under the first-to-
11 file rule. *Micron Technology, Inc. v. Mosaid Technologies, Inc.*, 518 F.3d 897, 904
12 (Fed. Cir. 2008)("The general rule favors the forum of the first-filed action, whether
13 or not it is a declaratory judgment action."). In addition, since this Court is the
14 forum of the second-filed case, the normal procedure is for this Court to stay or
15 dismiss this action, leaving it to the District of New Jersey court to decide any issue
16 regarding transfer, etc. *Alltrade, Inc. v. Uniweld Products, Inc.*, 946 F.2d 622, 627-
17 29 (9th Cir. 1991).

18 In any event, transfer of this case to Judge Klausner would be unwarranted
19 under Local Rule 83-1.3. Although Sony amended its original Complaint to make
20 it appear that only the same ten patents were asserted in both this case and the
21 *Westinghouse* case, that is not the whole story. A "real and substantial" dispute
22 seems to remain under the four patents Sony dropped, and claims may still be
23 asserted under those four patents. While Sony has sent VIZIO a covenant not to
24 sue under the four "dropped" patents, that covenant is limited, and does not appear
25 to extend to the full breadth of Sony's original infringement allegations against
26 VIZIO. See *FieldTurf USA, Inc. v. Sports Constr. Group, LLC*, 507 F.Supp.2d 801
27 (N.D. Ohio 2007). Therefore, the patents in suit here will not likely end up being
28 the same as those in the *Westinghouse* case.

1 Even if the exact same patents were at issue in both cases, however, that
2 alone would not be sufficient under the local rule to justify a related case transfer,
3 since at least one of the other factors identified in clause (a), (b) or (c) of the rule
4 must be present as well. *See* L.R. 8-1.3.1. Sony makes a conclusory claim that the
5 two actions will involve "the same or substantially identical questions of law and
6 fact," but it is insufficient. The same thing could be said of any two actions
7 involving the same patents, but L.R. 8-1.3 explicitly requires more than that to
8 justify a related case transfer. Moreover, while VIZIO's products are televisions,
9 they are also different from Westinghouse's, so Sony's infringement claims against
10 these two defendants will almost certainly differ, creating different issues of fact
11 and law. It cannot simply be assumed--as Sony does--that the same issues of claim
12 construction, validity and enforceability will arise in both actions. For example,
13 differences in products lead to different infringement and claim construction issues.
14 In short, Sony's motion is unsupported and does not justify reconsideration.


15 CONCLUSION

16 For the foregoing reasons, defendant VIZIO respectfully requests that:
17 (1) Sony's *Ex Parte* Application be denied, and (2) Sony's Motion for
18 Reconsideration either be denied or be set down for briefing and hearing based on
19 this Court's regular motion procedures.

20
21 Dated: November 20, 2008

Respectfully submitted,

JONES DAY

22
23 By: 
24 Thomas R. Malcolm

25 Attorneys for Defendant
26 VIZIO, INC.
27
28

EXHIBIT F

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13 Attorneys for Plaintiff Sony Corporation

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 SOUTHERN DIVISION

17 SONY CORPORATION, A Japanese
18 corporation,

19 Plaintiff,

20 vs.

21 VIZIO INC., A California corporation,

22 Defendant.

CASE NO. SA CV08-01135-~~AHS~~
TIME-SENSITIVE

ORDER DENYING SONY
CORPORATION'S *EX PARTE*
APPLICATION SEEKING WAIVER OF
L.R. 7-3'S 20-DAY WAITING PERIOD
AND SHORTENING OF BRIEFING
SCHEDULE REGARDING SONY'S
MOTION FOR RECONSIDERATION
OF TRANSFER ORDER

1 Plaintiff Sony Corporation ("Sony") has filed an *Ex Parte* Application
2 Seeking Waiver of L.R. 7-3's 20-Day Waiting Period and Shortening of Briefing
3 Schedule Regarding Sony Corporation's Motion for Reconsideration of Transfer
4 Order. Having considered the application, the other pleadings and filings in this
5 action, and for good cause appearing,

6
7 IT IS HEREBY ORDERED that:

8 (1) Sony's request to waive Civil Local Rule 7-3's 20-day waiting period
9 with regard to Sony's Motion for Reconsideration of Transfer Order is hereby
10 GRANTED and

11 (2) The briefing schedule for Sony's Motion for Reconsideration of Transfer
12 Order is as follows: Sony's Motion for Reconsideration is to be filed no later than
13 November 19, 2008, Vizio's opposition, if any, is to be filed no later than November
14 26, 2008, and Sony's reply, if any, is to be filed no later than December 2, 2008.
15 Hearing on this matter is tentatively set for December 8, 2008.

16 **DENIED**
17 BY ORDER OF THE COURT
18

19 Dated: 12/4/08

20 By 

21
22 Honorable R. GARY KLAUSNER
23 United States District Judge
24
25
26
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28